

**Regional Water Quality Control Board
Central Valley Region
Board Meeting – 23/24 April 2009
Agenda Item #22**

**Response to Written Comments for
The City of Rio Vista – Beach Wastewater Treatment Plant
Tentative Order Amending Waste Discharge Requirements
Order No. R5-2008-0108 (NPDES Permit No. CA0079588)
14 April 2009**

At a public hearing scheduled for 23/24 April 2009, the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) will consider adoption of a Order amending Waste Discharge Requirements Order No. R5-2008-0108 (NPDES Permit No. CA0079588) for the City of Rio Vista Beach Wastewater Treatment Plant. The tentative Order was issued on 4 March 2009. This document contains Regional Water Board staff responses to written comments received from interested persons. Written comments from interested persons were required to be received by the Regional Water Board by 6 April 2009 for the tentative Order in order to be included in the record. Comments were received by the deadline from the California Sportfishing Protection Alliance (CSPA). Written comments are summarized below, followed by Regional Water Board staff responses.

CSPA COMMENTS

Designated Status Request: CSPA requested designated party status for the board hearing scheduled for 23/24 April 2009 with regard to the proposed Order amending the NPDES permit for the City of Rio Vista Beach Wastewater Treatment Plant. The commenter will be granted designated party status for the subject hearing.

CSPA COMMENT # 1: The proposed Permit amendment contains an allowance for a mixing zone that does not comply with the requirements of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), the California Toxics Rule (CTR), or the Basin Plan.

- a. Both the SIP and the CTR require that dilution credits for human health criteria be based on the harmonic mean flow. The proposed Permit amendment does not utilize the harmonic mean flow for determining the dilution credits for human health criteria.
- b. A very clear unaddressed requirement (SIP Section 1.4.2.2) for mixing zones is that the point(s) in the receiving stream where the applicable criteria must be met shall be specified in the proposed Permit.
- c. Mixing zone requirements as prescribed in the SIP are dependent on whether a discharge is completely mixed. The proposed Permit amendment, which is based on the mixing zone conditions prescribed in Order No. R5-2008- 0108 may not be completely mixed.

Response: The proposed permit amendment does not make any determinations or findings regarding the allowance of a mixing zone. The mixing zone was allowed in adopted Order No. R5-2007-0108. The proposed Order simply modifies the performance-based effluent limitations for dibromochloromethane and dichlorobromomethane based on new information. Therefore, the comments regarding the allowance of a mixing zone are not within the scope of this public hearing.

CSPA COMMENT # 2: The proposed Permit amendment contains an inadequate antidegradation analysis that does not comply with the requirements of Section 101(a) of the Clean Water Act, Federal Regulations 40 CFR § 131.12, the State Board's Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247.

Response: Mixing zones do not violate state or federal antidegradation policies. (APU 90-004, p. 2; EPA Water Quality Standards Handbook 2d., §§ 4.4, 4.4.4, and Appendix G (Questions and Answers), p. 2.) Water quality standards are not required to be met within mixing zones. An antidegradation analysis is not required for areas within a mixing zone, as long as the requirements of the mixing zone policy are met. (*American Wildlands v. Browner* (10th Cir. 2001) 260 F.3d 1192, 1195-1196, 1198.) Only a "simple" antidegradation analysis is required for a mixing zone under the State Water Board Guidance. A "simple" antidegradation analysis consists of a finding that the mixing zone will be not be adverse to the purpose of the state and federal antidegradation policies. (APU 90-004, p. 2.) The proposed order does not increase the size of the existing mixing zone. Antidegradation findings are already included in the Fact Sheet, and the proposed Order also finds that anti-degradation policies are met.

CSPA COMMENT # 3: The proposed Permit amendment contains Effluent Limitations for Chlorodibromomethane and Dichlorobromomethane less stringent than the existing permit contrary to the Antidegradation requirements of the Clean Water Act and Federal Regulations, 40 CFR 122.44 (l)(1).

Response: The relaxation of the effluent limitations for dibromochloromethane and dichlorobromomethane is based on new information and is consistent with the anti-backsliding requirements of the Clean Water Act and federal regulations.

The performance-based effluent limitations in Order No. R5-2007-0108 for dibromochloromethane and dichlorobromomethane were intended to be based on the current performance of the Facility and are significantly more stringent than necessary to protect the beneficial uses of the receiving water. At the time Order No. R5-2007-0108 was developed there were only four quarterly samples collected in 2002 to determine the maximum projected effluent concentrations for these constituents. At least ten samples are needed to conduct a statistical

projection of the effluent quality. Therefore, a simplified approach was used in the development of the limits in Order No. R5-2007-0108. However, based on sampling since adoption of the permit, it has become apparent that the limits do not accurately represent the current performance of the Facility. In the proposed Order, the effluent limits have been recalculated based on ten samples collected since the permit took effect. The new proposed limits are representative of current performance and are still significantly more stringent than needed to protect the beneficial uses of the receiving water. Impacts to water quality due to the proposed changes will be insignificant. The collection of data is new information that was not available at the time Order No. R5-2007-0108 was adopted and thus meets the conditions in the federal regulations for the relaxation of effluent limitations.